IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 274 OF 2006

Keshav Rambhau Kolekar ...Applicant.

V/s

The State of Maharashtra ...Respondent.

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Mr. Rahul S. Kate for the applicant.

Ms. S.V. Gajre, APP for the State.

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CORAM: V.M. KANADE, J.

DATE: 13th February, 2006

P.C.:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. The applicant has been arrested in connection with an offence punishable under sections 363, 366 and 376 of the Indian Penal Code and which has been registered vide C.R. No. 161 of 2005 at Shirur Police Station. It is alleged that the applicant and the complainant eloped from their house, got married in a temple and, thereafter, the applicant and the complainant stayed at various places in hotel and lived as husband and wife. Thereafter, when they came back, a complaint was lodged by the complainant - prosecutrix in which she has stated that the applicant gave assurance of

marrying her and on that pretext took her to a temple and, thereafter, both of them resided in various lodges in various cities as husband and wife.

3. It is submitted by the learned Counsel appearing on behalf of the applicant that the alleged offence is said to have been committed by the applicant since the complainant - prosecutrix is a girl below 16 years of age. The School Register which is produced, indicates that the girl was 15 years and 7 months old. However, looking at the complaint which is lodged by the complainant - prosecutrix, there is no dispute that the applicant had sexual intercourse with the prosecutrix by consent. However, on account of her age, the said complaint has been lodged. The charge-sheet has already been filed. There is no possibility of the applicant tampering with the evidence or threatening the prosecution witnesses. The burden is on the prosecution to prove that the complainant - prosecutrix was below 16 years of age. The trial is not likely to begin for some time and, therefore, the applicant is entitled to be released on bail.

4. The applicant be released on bail in the sum of Rs 5000/- with one or two sureties in the like amount.

The applicant to report to Shirur Police Station once in a month.

5. The application is accordingly disposed of.

V.M. KANADE, J.